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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LESTER MCGARY,

Defendant and Appellant.

E045916

(Super.Ct.No. FVA700711)

OPINION

APPEAL from the Superior Court of San Bernardino County. Dwight W. Moore, Judge. Affirmed.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Lester McGary appeals after he pleaded guilty to one count of receiving stolen property. His appointed appellate counsel has filed a brief pursuant to *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493],

and *People v. Wende* (1979) 25 Cal.3d 436, raising no issues. Defendant has been afforded the opportunity to file a supplemental brief raising any additional issues he wished to have discussed, and he has failed to file such a brief. We have conducted a review of the entire record and have discovered no issues requiring reversal. The judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

The owner of an automotive business kept some welding equipment near the back door of the premises. On a particular day, he noticed that the welding equipment was gone. No one had been given permission to take it. Later, defendant approached the owner of another shop in the neighborhood, offering to sell the welding equipment. Defendant was arrested and charged with one count of receiving stolen property. The amended information alleged that defendant had suffered a prior burglary (strike) conviction in 1994, and four prior prison term enhancement allegations: forgery in 2005, the 1994 burglary, a 1988 burglary conviction, and petty theft with a prior in 1999.

After the preliminary hearing, in May 2007, defendant was held to answer and trial was set for July 2007. In June, however, based on the representations of defendant's counsel, the court expressed a doubt as to defendant's competence to stand trial. It suspended proceedings and ordered an evaluation. Two physicians examined defendant and wrote reports. Both physicians opined that defendant was competent. The court found defendant competent and reinstated proceedings.

In December 2007, defendant moved under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to relieve his appointed attorney and to appoint new counsel. The court denied the motion. In January 2008, defendant advised the court that he wanted to represent himself. (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525; 45 L.Ed.2d 562].) He withdrew that request later the same day. Defendant made a second *Marsden* motion in March 2008, on the eve of trial. The court also denied this motion.

On March 25, 2008, defendant changed his plea. Defendant agreed to plead guilty to the main charge, receiving stolen property, in exchange for dismissal of the strike allegation and the prior prison-term allegations. The court sentenced defendant to the middle term of two years in state prison.

Defendant filed a notice of appeal, and sought a certificate of probable cause; defendant desired to challenge the validity of the plea, based on the trial court's alleged erroneous finding that defendant was mentally competent, and in the failure to grant defendant's *Marsden* motion in December 2007. The trial court granted the certificate of probable cause.

Defendant's appointed appellate counsel has filed a brief, setting forth the facts and proceedings below, but raising no issues on appeal.

ANALYSIS

I. Standard of Review

When counsel files a brief setting forth a summary of the facts and proceedings, but raises no specific issues, the Court of Appeal must conduct an independent review of

the entire record to determine whether it reveals any issues which would, if resolved favorably to the appellant, result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d 436, 441-442.)

Defendant has been afforded an opportunity to file any supplemental brief required; he has filed none. Appointed counsel has identified some potential areas of inquiry: whether the trial court abused its discretion in finding defendant competent to stand trial, whether the trial court abused its discretion in denying defendant's *Marsden* motion in December 2007, and whether the court should have declared a doubt as to defendant's competency and held a new competency determination based on defendant's conduct during the *Marsden* proceedings.

II. The Proceedings Below Were Proper

As to the issue of defendant's competency, we do not appear to have the physicians' reports in the record on appeal. The court and counsel did, however, note and discuss that both doctors' reports found defendant competent to stand trial. In addition, as a review of the entire record shows, defendant was capable of understanding the issues and cooperating with his counsel in his representation. This record does not show an abuse of discretion in finding defendant competent to stand trial; neither does it demonstrate that the court should at any other time have declared a doubt as to defendant's competency to stand trial. To the contrary, defendant remained consistently articulate, purposeful, responsive and capable of understanding the proceedings and aiding in his case.

Defendant made two *Marsden* motions to appoint a new attorney. In each instance, defendant was unable to articulate any problem that was attributable to the attorney assigned to him, or to demonstrate that the attorney was not representing him properly, or that there was any breakdown in their relationship.

A review of the entire record on appeal has otherwise brought to light no issues requiring further discussion, or reversal of the judgment.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.
/s/ King
J.